

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Patent Application

Inventors: David Gray Boyer et al.

Serial No.: 10/672633

Conf. No.: 8084

Filing Date: 09/26/2003

Art Unit: 8084

Examiner: Mehpour, Naghmeh

Docket No.: 633-061US

Title: Method and apparatus for delivering a voice mail message with an indication of the presence of the sender

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

Respectfully,
David Gray Boyer et al.

By **/Robert L. Greenberg/**
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Dear Sir:

PRE-APPEAL BRIEF REMARKS

Claims 1-24 were presented for examination were rejected. The applicants respectfully traverse the rejections and request reconsideration in light of the following comments.

The applicants respectfully submit that the Office failed to make cite proper prior art, and as such failed to make a prima facie rejection.

Because of this omission, the applicants respectfully request a panel review of the present application.

Claims 1-24 have been rejected under 102(e) as being anticipated by G.R. Brunson, United States Patent Application Publication No. 2007/0121808 A1 (hereinafter "Brunson"). The applicants respectfully traverse the rejection.

For purposes of reference, 102(e) is reproduced below:

102(e) the invention was described in - (1) an application for patent, published under section 122(b), ***by another*** filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language; or

(emphasis supplied)

The application herein is not by another in accordance with 102(e). The definition of the term "by another" is given in 103 and is reproduced for reference:

103(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, ***at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.***

(emphasis supplied)

Both the present application and Brunson were and are assigned to Avaya, Inc. Avaya, Inc. is the successor-in-interest to Avaya Technology Corp. and Avaya Technology, LLC. As such, both inventions were commonly owned at the time of filing and Brunson is not proper prior art with regard to the present application.

For this reason, the applicants respectfully submit that the rejection of claims 1-24 is traversed.

Additionally, the Brunson reference has a filing date of October 13, 2006. The filing date of the present application was September 26, 2003. For this reason, Brunson is again not prior art with regard to the present application.

Brunson claims to be a division of application no. 10/348, 309 with a filing date of January 20, 2003. However, that application was not used as a reference in the application, and the Brunson reference is itself ***after*** the filing date of the present application.

For this reason as well, the applicants respectfully submit that the rejection of claims 1-24 are traversed.

In conclusion, because the reference cited in the Office's rejection fails to meet the definition of prior art, the rejection is unsustainable. The applicants respectfully request that the present application proceed to issue.

Respectfully,
David Gray Boyer et al.

By **/Robert L. Greenberg/**
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